

RESTRICTIVE COVENANT

OWNER: S/H AUSTIN PARTNERSHIP, a Texas general partnership

ADDRESS: 315 East Commerce St., Suite 300, San Antonio, Texas 78205

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY: Lots 9, 10, 11, and 12, Block 29, Original City of Austin, as more particularly described in the map or plat on file in the General Land Office of the State of Texas.

WHEREAS, the Owner (the "Owner", whether one or more) of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. If the Property is redeveloped for a hotel-motel use that exceeds a floor-to-area ratio of 8.0 to 1.0, the following applies:
 - a) The Owner shall design and construct streetscape improvements in compliance with the City of Austin Great Streets design criteria as the criteria existed on March 1, 2009. Design, permitting and construction of streetscape improvements will be at Owner's expense. The Owner shall coordinate the design of the streetscape improvements with the Urban Design Section of the Neighborhood Planning and Zoning Department. The Urban Design Section shall inspect and approve the streetscape improvements prior to issuance of a certificate of occupancy.
 - b) Owner agrees to cost participate for traffic improvements identified by the Public Works Department during the site plan review process.
 - c) All commercial development shall be designed and built according to the US Green Building Council's Leadership in Energy and Environmental Design ("LEED™") Green Building Rating System, Certified Level. Prior to issuance of a certificate of occupancy by the City, certification must be provided by a LEED™ certified consultant showing that the project has been designed and constructed consistent with LEED™ Silver guidelines.
 - d) The following shall be submitted to the Transportation Review Section of the Watershed Protection and Development Review Department of the City.
 - i) An access study for any proposed project on the Property; and
 - ii) Information on loading facility provisions and trash collection for the project.

- e) Above-ground parking structures are not permitted. All parking provided on the Property shall be underground.
 - f) Reasonable sound mitigation for a hotel room must be included in the building design that is appropriate for the location of a hotel in the warehouse district of the City.
 - g) Balconies located on the second floor of the building at the corner of Colorado Street and 3rd Street shall be constructed for outdoor use, provided that the City allows the construction of such balconies over a City sidewalk.
 - h) A vehicle drop-off area with porte-cochere shall be provided along Colorado Street.
2. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
 3. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
 4. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
 5. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the _____ day of _____, 2009.

OWNER:

**S/H AUSTIN PARTNERSHIP,
a Texas general partnership**

By: HPI-Austin Properties, Inc.,
a Delaware corporation,
its general partner

By: _____
John S. Beauchamp,
Vice President

APPROVED AS TO FORM:

Assistant City Attorney
City of Austin

THE STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on this the _____ day of _____, 2009, by John S. Beauchamp, Vice President of HPI-Austin Properties, Inc., a Delaware corporation, general partner of S/H Austin Partnership, a Texas general partnership, on behalf of the corporation and the partnership.

Notary Public, State of Texas

After Recording, Please Return to:
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas 78767-1088
Attention: Diana Minter, Paralegal